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2 **UNITED STATES DISTRICT COURT**
3 **FOR THE NORTHERN DISTRICT OF OHIO**

4 **LAVERA FOLTYNSKI,**) **Case No.:**
5)
6 **Plaintiff,**)
7 **v.**)
8 **VITAL ONE HEALTH PLANS**) **JURY TRIAL DEMANDED**
9 **DIRECT, LLC,**)
10 **Defendant.**)
11 _____)

12 **COMPLAINT**

13 LAVERA FOLTYNSKI (“Plaintiff”), by and through her attorneys,
14 KIMMEL & SILVERMAN, P.C., alleges the following against VITAL ONE
15 HEALTH PLANS DIRECT, LLC (“DEFENDANT”):
16

17 **INTRODUCTION**

18
19 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection
20 Act, 47 U.S.C. §227.
21

22 **JURISDICTION AND VENUE**

23 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v.
24 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).
25
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28

1 14. The automated calls began with a pre-recorded voice before speaking
2 to one of Defendant's representatives.

3 15. Defendant's telephone calls were not made for "emergency purposes;"
4 rather, Defendant was calling Plaintiff for telemarketing purposes.
5

6 16. Desiring to put an end to these repeated calls, Plaintiff spoke with
7 Defendant in September 2016 shortly after the calls began and revoked consent for
8 Defendant to call her.
9

10 17. Defendant heard and acknowledged Plaintiff's request to stop by
11 hanging up on Plaintiff.

12 18. Once Defendant was informed that its calls were unwanted and to
13 stop, there was no lawful purpose to making further calls, nor was there any good
14 faith reason to place calls.
15

16 19. Rather than restrict its calls to Plaintiff's cellular telephone, Defendant
17 continued to call Plaintiff multiple times per day despite Plaintiff's clear revocation
18 of consent.
19

20 20. Thereafter, Plaintiff continued to receive calls through October 2016.

21 21. Ultimately, after Plaintiff's requests to stop the calls were ignored by
22 Defendant, she was forced to block calls from Defendant's phone numbers.
23

24 22. Upon information and belief, Defendant conducts business in a
25 manner which violates the Telephone Consumer Protection Act.
26

**DEFENDANT VIOLATED THE TELEPHONE CONSUMER
PROTECTION ACT**

23. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

24. Defendant initiated automated calls to Plaintiff using an automatic telephone dialing system.

25. Defendant's calls to Plaintiff were not made for emergency purposes.

26. Defendant's calls to Plaintiff, on and after September 2016, were not made with Plaintiff's prior express consent.

27. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

28. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

29. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

1 WHEREFORE, Plaintiff, LAVERA FOLTYNSKI, respectfully prays for a
2 judgment as follows:

- 3 a. All actual damages suffered pursuant to 47 U.S.C. §
4 227(b)(3)(A);
5
6 b. Statutory damages of \$500.00 per violative telephone call
7 pursuant to 47 U.S.C. § 227(b)(3)(B);
8
9 c. Treble damages of \$1,500.00 per violative telephone call
10 pursuant to 47 U.S.C. §227(b)(3);
11
12 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
13
14 e. Any other relief deemed appropriate by this Honorable Court.

15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff, LAVERA FOLTYNSKI, demands
17 a jury trial in this case.

18 Respectfully submitted,

19 DATED: October 28, 2016

20 By: /s/ Amy Lynn Bennecoff Ginsburg
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